



Profile Central, Inc.

Livonia, MI 48154

To: Representative Switalski

From: Valerie Earle, 734-522-5640

RE: House Bill 4887

Thank you for the opportunity to provide you with my professional input on this important piece of legislation. I have been conducting background checks since 1996 and am a licensed private investigator, have a master's degree in Human Resources Administration from Central Michigan University, and have been a consultant for some great Michigan for over 10 years companies, specifically in the hiring process.

Many employers use credit history as a tool in their pre-employment screening as just one measure of judgment and character. Their reasoning is: if you can't manage your financial obligations, they wonder if it's a sign of irresponsibility. The other concern is if your monthly debt payment is higher than your salary, some employers worry that it may distract from your performance or create a temptation to do something to harm customers or the company financially. However, both of these concerns are invalid when they don't have all of the information and sometimes that additional information is prohibited from them asking/knowing according to Michigan and Federal law.

The information that can be gained from credit reports in making those kinds of judgments are valid only when the job has the BFOQ where handling money and the responsibility factor is important or temptations of taking stealing money (embezzlement or outright theft) or identity theft of customer's personal information are a risk that must be managed. I will present, at the end of this report, alternatives to access to credit reports as is currently practiced.

As for the link between poor credit and job performance, I am not aware of any statistics to support that conclusion. Perhaps that was true 25 years ago when a person had a majority of control over their credit reports but in a credit based economy, this cannot be a consistent conclusion today. It may only show that the individual may have hit rough patches, and now they're caught in a vicious cycle: To pay down their debt, they need a job, but they can't get hired because of their debt.

Valerie Earle, 734-522-5640

With that said, here is why I believe that for most employment positions, credit reports should not be used as part of the process.

1. The people that pull credit reports are not screened themselves as to their worthiness to have that personal of information on an individual. They often have no certificate of training in how to evaluate the data and they also have no training in the laws that apply in how they use the information. For example, most don't understand the ratio of income to debt such as: Typically, a person's credit is in a safe range if they have less than 35% of their income committed to fixed payments (the information reported on the credit report) such as mortgage, car, and credit. They will have another 25-35% paid in taxes, and then the balance for discretionary spending like home and car insurance, food, telephone, heat, and electricity. When fixed costs surpass 35%, the individual is entering the dangerous zone. But that analysis is rarely known by employers pulling credit reports.
2. The employer is not privileged to additional information that plays a significant role in the truth behind the data such as a spouse or partner who contributes to the household income. Other revenue such as inheritances and second jobs that one or all members of the household contribute to the overall finances. Michigan law prohibits asking in a pre-employment setting about marital status so clarifying any concerns about debt to income ratio based solely on the applicant's potential earnings from the company is not allowed to be asked. This could cause an unfair bias to the candidate's success in being offered the job.

Often the employer pulls the wrong type of credit report that adversely affects the applicant's credit score. There are two different kinds of credit reports. One affects the individual's actual credit score by adding an inquiry to the mix. Each inquiry on a person that does not result in issuing credit takes the individual's credit score down. Instead, the credit bureaus created a separate report called a PEEER report (Pre-employment Evaluation Report http://www.universalbackgroundscreening.com/employment_screening/credit_TU.pdf) for employment consideration only and do not affect the individual's credit score and also removes information that the employer does not need access to such as account numbers.

3. There are far too many reasons for problems in credit reports that are far outside of the applicant's control: medical emergencies, sudden job loss, divorce (plus potentially a vindictive or out of control spouse), and the all too famous identity theft but there are also countless errors that happen either on the end of the reporting creditor to the credit bureau or in the entry of records into the computer by error prone humans. To hold the individual responsible for the credit report results is not fair for the reasons stated above.

So a credit report is no longer a clear picture of a person's responsibility but more of a picture of their life and some difficult times that people have gone through as well as a reminder of how many mistakes people can make in entering data as the credit bureaus do. There is also the potential violation of the ADA and HIPAA in credit reports when an employer sees multiple medical bills in the report, they will

jump to conclusions that the applicant has medical issues that will adversely affect their own health insurance premiums and without ever saying it – not hire the person based on that very prohibited reasoning. Other laws can be trampled in the process as well – as the employer attempts to gain answers to concerns on the credit report and violate Michigan and Federal EEOC restrictions on pre-employment questions such as a marital status.

4. There are far too many tools out there for employers to use to get a clear picture of the person's reliability and integrity without running credit reports. Driving records can tell an employer far more about what the applicant does when no one is looking. A driving history is something that the individual does have complete control over and for every time they are caught, there were most likely at least 10 times they have done the same thing before. So how much do they respect the law and do they think they are above it and will try to get away with it when they think no one is looking?

Personal References – a person who is stable, responsible, and has high integrity can give you at least 3 people they have known for 3 years or more who are not relatives or previously employers but who are actual friends who will vouch for them. That is not something someone who is irresponsible and not trustworthy can do. I have tested this theory over the years and it has proven to be a valuable one.

Employers – past employers will not give any kind of a reference for people who they have reservations about. If a potential employer cannot get good references on a candidate and they do not have three personal references, then an employer should probably pass on that candidate if trustworthiness is a BFOQ.

These are just a few of the other tools available to assist the employer to gain a perspective of the candidate's character. A credit report rarely adds anything to that but can actually cause harm.

I hope this has been of assistance, and please do not hesitate to call me and I would also be happy to be available to participate via phone link up to the meeting.

Additional background about background checks:

Here are some of the pieces of information that might be included in a background check. Note that many of these sources are public records created by government agencies.

- Driving records
- Vehicle registration
- Credit records
- Criminal records
- Social Security no.
- Education records
- Court records
- Workers' compensation

Written Consent Required and Adverse Action Notices

The most recent change to the FCRA made criminal convictions reportable indefinitely. California still follows the seven-year rule (CA Civil Code 1786.18) as do some other states. To find the limit for reporting criminal convictions in your state, contact your state employment agency or office of consumer affairs. Other laws that should be considered:

- Bankruptcies after 10 years.
 - Civil suits, civil judgments, and records of arrest, from date of entry, after seven years.
 - Paid tax liens after seven years.
 - Accounts placed for collection after seven years.
 - Any other negative information (except criminal convictions) after seven years.
- However, the above reporting restrictions imposed by the FCRA do *not* apply to jobs with an annual salary of \$75,000 or more a year. (FCRA §605(b)(3)).

Under the FCRA, a background check report is called a "consumer report." This is the same "official" name given to your credit report, and the same limits on disclosure apply. The FCRA says the following *cannot* be reported:

Some states may have stronger laws, such as California's Investigative Consumer Reporting Agencies Act (Civil Code §1786) and the California Consumer Credit Reporting Agency Act (Civil Code §1785). In addition, many state labor codes and state fair employment guidelines limit the content of an employment background check. (For more on the FCRA, see [Part 5](#).)

The federal Fair Credit Reporting Act (FCRA) sets national standards for employment screening. However, the law only applies to background checks performed by an outside company, called a "consumer reporting agency" under the FCRA. The law does not apply in situations where the employer conducts background checks in-house.

3. What Cannot Be in a Background Check Report?

- Bankruptcy
- Character references
- Neighbor interviews
- Property ownership
- Military records
- State licensing records
- Drug test records
- Past employers
- Personal references
- Incarceration records
- Sex offender lists

- **Under the FCRA, employers must obtain an applicant's or employee's written authorization before a background check is conducted.** Some employers are not in compliance with the Written Notice and Authorization requirements. Before obtaining a consumer report, the employer must notify the individual in writing (in a separate document) that a report may be used and attain his or her written permission before requesting a report from a CRA.

Many employers assume that including a notice on their employment application satisfies this requirement; however, written notification must be presented to applicants or employees in the form of a separate document in order to be in complete compliance.

Also, many employers do not fully comply with the “adverse action” requirements. If anything from the background report is used as a factor in taking any type of adverse action (hiring decision, promotion opportunity, etc.), that person must be advised of this fact and given an opportunity to dispute information contained in the report (pre-adverse action).

This Pre-Adverse Action Disclosure should include a copy of the consumer report as well as a copy of “A Summary of Your Rights Under the Fair Credit Reporting Act.” Only after the employer has notified the individual and has given him or her an opportunity to dispute information contained in the report can the final Adverse Action notice be given.

Additional Information available here: <http://www.privacyrights.org/fs/fs16-bck.htm>

Summary of laws that directly relate to background check:

State of Michigan

Elliot Larsen – Michigan Civil Rights Act – Act 453 of 1976 includes all the same as the Federal Civil Rights except it adds protection based on height and weight, family or marital status.

Disclosure of Employee Job Performance, Act 90 of 1996, allows employers to disclose information in the personnel file with fear of reprisal.

Bullard Plawecki Employee Right to Know – Act 397 of 1978 – allows an employee to get a copy of their personnel file and to include their own rebuttal to any negative information.

Persons with Disability Act, Act 220 of 1976 – Michigan ADA – prohibit discriminatory practices, policies, and customs in the exercise of those rights and to provide remedies.

Federal

Civil Rights Act of 1991 and Title VII of 1964: Protects against discrimination based on race, color, religion, sex, national origin, age, or disability.

COBRA – Public Act 99-272 continuation coverage for health insurance.

ADA – Title I and Title V Public Act 101-336 – protection from discrimination of those with disabilities.

HIPAA – Public Act 104-191 Continuity in insurance coverage to protect against damages from pre-existing condition expenses. Also, confidentiality of your medical records

FCRA – Federal Credit Reporting Act - Public Act 90-321, 91-508 credit and pre-employment reports

FLSA – Fair Labor Standards Act – Public Act 87-30, 89-601, 93-259, 95-151, 99-150, 101-157, 89-755 – covers all wage and hour issues as well as environment and safety issues.

Drivers Privacy Protection Act – DPPA – protects the information maintained by States on Drivers from being distributed without a valid reason.

Age Discrimination in Employment Act (ADEA) – which protects individuals 40 years of age or older.

Similar Legislation to Protect Job Seekers:

Michigan PA90 – protection regarding what past employers can and cannot say about a former employee.
<http://www.legislature.mi.gov/%28uwxcp33vm3d0ejmbmexw45%29%29/mileg.aspx?page=McIPASearch>

Federal: H.R. 3149: Equal Employment for All Act

To amend the Fair Credit Reporting Act to prohibit the use of consumer credit checks against prospective and current employees for the purposes of making adverse employment decisions. <http://www.govtrack.us/congress/bill.xpd?bill=h111-3149>

Other States:

Washington state governor Christine Gregoire signed S.B. 5827 into law on April 18. As an effect of this new law, employers in Washington state may no longer access the credit reports of employees or job applicants unless such information is substantially related to the individual's current or potential job responsibilities.

This is an interesting article by Experian. It states that **California, Maryland, and Minnesota all have similar laws restricting the use of credit reports by employers.** http://www.experian.com/products/pdf/employment_insight.pdf

In five states — **Hawaii, Pennsylvania, New York, Washington and Wisconsin** — **employers must prove a credit check is job-related**, according to Rebecca Herold, author of "The Privacy Papers."

This link has links to all state's employment laws http://employeeissues.com/state_labor_laws.htm

Summary of problems with employers using credit reports for employment:

1. Employers are often very uninformed in how to read them and apply the information
2. Applicants often have no control over major events in life that have great impact on their credit report: Medical, job loss, divorce are just three. That is not about a person's character or reliability.
3. Employers often don't understand they need to pull a PEER report and therefore unnecessarily cause negative effect on the applicant's credit score.
4. Often credit reports contain information or lead to questions that are protected by laws such as ADA and Elliot Larsen (marital status.)
5. An employer using privileged information in the credit report to make completely illegal decisions and no one is the wiser – unpaid medical bills on a credit report causes employers to discriminate under the concern of protecting his own health insurance plan and costs.
6. There are many other more reliable sources to determine if a person is trustworthy and reliable. After all, a really good embezzler never gets caught but just moves on. But a good background check professional can discern from the other aspects of a background check the red flags that are consistently present in all unethical and unreliable people.
7. Credit reports are no longer the tool that they were created to be 50 years ago. Then, the individual had almost 100% control over what was seen in those reports. Today, that is far from the case and as such, should not be used to bar a person from employment.

Sincerely,

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